

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	85964323
LAW OFFICE ASSIGNED	LAW OFFICE 110
MARK SECTION (no change)	
ADDITIONAL STATEMENTS SECTION	
DISCLAIMER	No claim is made to the exclusive right to use HOST apart from the mark as shown.
PRIOR REGISTRATION(S)	The applicant claims ownership of U.S. Registration Number(s) 0720144, 0861188, 0960143, and others.
MISCELLANEOUS STATEMENT	Please see the attached Remarks and Declaration
MISCELLANEOUS FILE NAME(S)	
ORIGINAL PDF FILE	mis-4535358-20141125105821938855_1257-0037_Remarks.pdf
CONVERTED PDF FILE(S) (3 pages)	\\TICRS\EXPORT16\IMAGEOUT16\859\643\85964323\xml9\RFR0002.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\859\643\85964323\xml9\RFR0003.JPG
	\\TICRS\EXPORT16\IMAGEOUT16\859\643\85964323\xml9\RFR0004.JPG
ORIGINAL PDF FILE	mis-4535358-20141125105821938855_1257-0037_Declaration_signed.pdf
CONVERTED PDF FILE(S) (2 pages)	\\TICRS\EXPORT16\IMAGEOUT16\859\643\85964323\xml9\RFR0005.JPG
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SIGNATURE SECTION	
RESPONSE SIGNATURE	/Marina F. Cunningham/
SIGNATORY'S NAME	Marina F. Cunningham
SIGNATORY'S POSITION	Attorney of Record

SIGNATORY'S PHONE NUMBER	860.549.5290
DATE SIGNED	11/25/2014
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Tue Nov 25 11:01:28 EST 2014
TEAS STAMP	USPTO/RFR-4.53.53.58-2014 1125110128427791-85964323 -500af8613a32066762b31d6f 29d8b24882fbc68ca52129479 a7d67e98a0fdbd02-N/A-N/A- 20141125105821938855

PTO Form 1960 (Rev 9/2007)
OMB No. 0651-0050 (Exp. 07/31/2017)

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **85964323** has been amended as follows:

ADDITIONAL STATEMENTS

Disclaimer

No claim is made to the exclusive right to use HOST apart from the mark as shown.

Claim of Prior Registration(s)

The applicant claims ownership of U.S. Registration Number(s) 0720144, 0861188, 0960143, and others.

Miscellaneous Statement

Please see the attached Remarks and Declaration

Original PDF file:

[mis-4535358-20141125105821938855_.1257-0037_Remarks.pdf](#)

Converted PDF file(s) (3 pages)

[Miscellaneous File1](#)

[Miscellaneous File2](#)

[Miscellaneous File3](#)

Original PDF file:

[mis-4535358-20141125105821938855 . 1257-0037 Declaration signed.pdf](#)

Converted PDF file(s) (2 pages)

[Miscellaneous File1](#)

[Miscellaneous File2](#)

SIGNATURE(S)

Request for Reconsideration Signature

Signature: /Marina F. Cunningham/ Date: 11/25/2014

Signatory's Name: Marina F. Cunningham

Signatory's Position: Attorney of Record

Signatory's Phone Number: 860.549.5290

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Serial Number: 85964323

Internet Transmission Date: Tue Nov 25 11:01:28 EST 2014

TEAS Stamp: USPTO/RFR-4.53.53.58-2014112511012842779

1-85964323-500af8613a32066762b31d6f29d8b

24882fbc68ca52129479a7d67e98a0fdbd02-N/A

-N/A-20141125105821938855

Remarks

In the Final Office Action, the Examining Attorney makes final the requirement to disclaim the term "HOST" apart from the mark as a whole. Applicant agrees to add the disclaimer of "HOST" to the present application. However, Applicant's previous disclaimer of the terms "NATIONAL SKI PATROL" was inadvertent and Applicant wishes to withdraw the disclaimer of "NATIONAL SKI PATROL."

According to the Lanham Act, "...nothing herein shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The Director may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made." 15 U.S.C. §1052(f).

Three basic types of evidence may be used to establish acquired distinctiveness under §2(f): (1) a claim of ownership of one or more prior registrations on the Principal Register of the same mark for goods or services that are the same as or related to those named in the pending application (*see* 37 C.F.R. §2.41(b); TMEP §§1212.04–1212.04(e)); (2) a statement verified by the applicant that the mark has become distinctive of the applicant's goods or services by reason of substantially exclusive and continuous use in commerce by the applicant for the five years before the date when the claim of distinctiveness is made (*see* 37 C.F.R. §2.41(b); TMEP §§1212.05–1212.05(d)); and/or (3) actual evidence of acquired distinctiveness (*see* 37 C.F.R. §2.41(a); TMEP §§1212.06–1212.06(e)(iv)).

According to TMEP Section 1212, the applicant may submit one or any combination of these types of evidence. At this time, Applicant submits (1) a claim of ownership of one or more prior registrations on the Principal Register of the same mark for services that are the same as or related to those in the pending application, and (2) a verified statement by Applicant that the mark has become distinctive of Applicant's services by reason of substantially exclusive and continuous use in commerce by the Applicant for more than the five years before the date when the claim of distinctiveness is made.

At this time, Applicant adds a claim of ownership for the following U.S. Registrations: U.S. Reg. No. 720,144 for the mark "NATIONAL SKI PATROL," registered in 1961 with a date of first use in 1938 (no disclaimer); U.S. Reg. No. 861,188 for the mark "NATIONAL SKI PATROL," registered in 1968 with a date of first use in 1938 (no disclaimer); U.S. Reg. No. 960,143 for the mark "NATIONAL SKI PATROL," registered in 1973 with a date of first use in 1964 (no disclaimer); and U.S. Reg. No. 962,299 for the mark "NATIONAL SKI PATROL," registered in 1973 with a date of first use in 1938 (no disclaimer). Applicant notes that the services in

those registrations are for services that are the same as or related to those as listed in the present application.

Applicant also includes herewith Applicant's verified statement that the mark has become distinctive of the applicant's goods or services by reason of substantially exclusive and continuous use in commerce by the applicant for the five years before the date when the claim of distinctiveness is made.

Finally, Applicant notes that the phrase "NATIONAL SKI PATROL" has become a distinctive, well-known mark across the United States. For over seventy (70) years, National Ski Patrol (hereinafter, "NSP") has served as a member-driven professional organization of ski patrols and approximately 27,000 ski patrollers who work at the majority of U.S. ski resorts. NSP provides credentialed education and training in such areas as leadership, outdoor emergency care, safety and over-the-snow transportation with a view to being recognized as the premier provider of training and educational training programs for emergency rescuers who serve the outdoor recreation community. In fact, many safety practices that have been since taken over by the U.S. government or the ski industry originated with NSP, such as lift inspection, advice on trail construction, and a system of trail marking. In 1963, NSP advocated a code of conduct that became enshrined in the Skier's Responsibility code, endorsed by the National Ski Areas Association and the Professional Ski Instructors of America. In 1980, President Carter enacted legislation that granted a Federal Charter to NSP, making it one of only a few institutions to receive such charter, along with the American Red Cross, the YMCA, and the Boy Scouts of America.

NSP is widely known across the United States for many reasons, one of which is its publishing of a host of manuals to support its educational programs. Originally affiliated with the American Red Cross, NSP originated its own Outdoor Emergency Care program and accompanying book in 1987-1988, which is now recognized by resorts and recreational facilities in all fifty (50) states as the standard of training for emergency care in the outdoor environment. In cooperation with area management and lift engineers, NSP published the first Lift Evacuation Technical Manual in 1975. The first Ski Mountaineering Manual was published in 1980, replaced in 1995 by Mountain Travel and Rescue. The Avalanche Instructor's Manual was published in 1995 and revised extensively in 2002. Ski Patrol Magazine is the most widely read publication, with a subscription base of approximately 28,500 readers.

Thus, thanks to its wide-reaching public efforts to promote safety guidelines and protocols to skiers, snowboarders, and mountain rescue patrol, NSP has acquired significant goodwill in its "NATIONAL SKI PATROL" marks, as evidenced at least in part by its many registered "NATIONAL SKI PATROL" marks and associated services. In light of this information, Applicant respectfully requests withdrawal of its disclaimer of "NATIONAL SKI PATROL." Applicant also respectfully requests that the Examining Attorney withdraw the descriptiveness refusal of "NATIONAL SKI

PATROL" and add a claim of acquired distinctiveness under Section 2(f) of the Trademark Act to the present application. These requests are supported by (1) Applicant's claim of ownership of one or more prior registrations on the Principal Register of the same mark for services that are the same as or related to those in the pending application submitted herewith, and (2) Applicant's verified statement that the mark has become distinctive of Applicant's services by reason of substantially exclusive and continuous use in commerce by the Applicant for more than the five years before the date when the claim of distinctiveness is made, also submitted herewith.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of) Examiner: Sani Khouri
)
National Ski Patrol System, Inc.) Trademark Law Office: 110
)
on the mark NATIONAL SKI PATROL)
MOUNTAIN HOST)
)
Serial No.: 85/964,323)
) (Our Docket No. 1257-0037)
Filed: June 19, 2013)

DECLARATION

The above-identified mark has become distinctive of the applicant's goods and services by reason of substantially exclusive and continuous use in commerce by the applicant for the five years before the date when the claim of distinctiveness is made.

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he is properly authorized to execute this application on behalf of the applicant; he believes the applicant to be the owner of the trademark sought to be registered, or, if the application is being filed under 15 U.S.C. 1051(b), he believes applicant to be entitled to use such mark in commerce; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the

goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his own knowledge are true and all statements made on information and belief are believe to be true.

11-24-2014
Date:

B. J. L. 11h
National Ski Patrol System, Inc.
Applicant